

Letter of Findings: 02-20130194
Corporate Income Tax
For the Tax Year 2006

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ISSUE

I. Late Payment Penalty – Corporate Income Tax.

Authority: IC § 6-8.1-10-2.1(a); IC § 6-8.1-10-2.1(b); IC § 6-8.1-10-2.1(e); [45 IAC 15-11-2\(c\)](#).

Taxpayer argues that the Department should exercise its discretion to abate a ten-percent late payment penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana business. Taxpayer was required to produce an "audited financial statement" for its financial institution. The internal audit revisited Taxpayer's method of accounting for its pension expenses and interest expenses. The audit determined that Taxpayer made an error which would reduce its net operating loss carryback based on certain pension and interest adjustments. Taxpayer filed an amended 2006 return which required that Taxpayer pay tax and interest.

Taxpayer states that the Department of Revenue ("Department") added a ten-percent "late penalty" to the amount of tax and interest owed and protested that penalty. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest.

I. Late Payment Penalty – Corporate Income Tax.

DISCUSSION

The Department added a ten-percent penalty to the amount of additional tax and interest owed for 2006. Taxpayer believes the penalty should be abated and explains that it relied on a tax professional to prepare the original 2006 return and that it has always exercised ordinary business care and prudence. Taxpayer points out that when it discovered the error, it self-reported error and filed an amended the return to correct the amount of tax due the state.

Indiana law imposes a penalty for late payment of taxes. IC § 6-8.1-10-2.1(a).

(a) If a person:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department;

the person is subject to a penalty. (Emphasis added).

IC § 6-8.1-10-2.1(b) provides for the amount of the penalty;

Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10[percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

IC § 6-8.1-10-2.1(e) provides for relief from the penalty as follows:

A person who wishes to avoid the penalty imposed under this section must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period. (Emphasis added).

Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to

carry out a duty giving rise to the penalty imposed" Based upon the particular facts and circumstances as explained by Taxpayer, the Department is prepared to agree that Taxpayer has established reasonable cause sufficient to warrant abating the ten-percent penalty.

FINDING

Taxpayer's protest is sustained.

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